In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION FOR JUDGMENT

The United States of America moves the Court for judgment as prayed in the Complaint, on the ground that there is no genuine issue as to any material fact and the United States is entitled to judgment as a matter of law.

HERBERT BROWNELL, JR.,
Attorney General.

J. LEE RANKIN,
Solicitor General.

DECEMBER 1956.

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STATEMENT WITH RESPECT TO MOTION

In brief, the case of the United States, as already explained in this litigation,[1] is that this Court by its decision in *United States* v. *Louisiana,* 339 U. S. 699, held that the State of Louisiana had no title to the submerged lands and resources of the Gulf of Mexico off its coast, and that the United States was entitled thereto as against the State. Thereafter, the Submerged Lands Act of May 22, 1953, granted to Louisiana the submerged lands and resources within its boundary, including a marginal belt of three miles if the State should claim so much, or to any more extended boundary previously approved by Congress or as it existed when the State entered the Union, but not extending gulfward in any event more than three leagues from the low-water mark and outer limit of inland waters. 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315. The United States claims that the State boundary as defined in that Act is only three miles from the coast, and seeks an adjudication of its rights in the submerged lands and resources seaward of that distance, as against adverse claims thereto made by the State.

Despite the adjudication in *United States* v. *Louisiana, supra,* Louisiana's answer asserts that it owns and has always owned all the submerged lands and resources of the continental shelf off its coast and that

[1] See our brief in support of the motion for leave to file the complaint, pages 9–15, and the Memorandum for the United States in Reply to Louisiana's Brief in Opposition to Motion for Leave to File Complaint. See also our brief in support of the motion for modification of the decree in *United States* v. *Louisiana,* No. 7, Orig., Oct. Term, 1954, motion denied, 350 U. S. 812.

the United States has not and has never had any proprietary rights therein. The State claims a boundary at the 27th parallel (from 120 to 180 miles from the coast) or, alternatively, at various lesser distances, the most restricted of which is three leagues from the coast. The State asserts that it disagrees with the United States as to the location of the base line (the low-water mark and outer limit of inland waters) from which the width of the marginal belt should be measured, requests that the two questions be tried together, alleges that to do so will require introduction of extensive evidence, and moves that the case be transferred for that reason to a district court.

Under the Submerged Lands Act, the extent of the grant made to each State depends on the location of the boundary of the particular State, as defined in the Act. That location must be determined from the applicable circumstances in each case. With respect to the claims made by the State of Louisiana, the United States takes the position, as shown by the pleadings and briefs we have already filed herein, that the State cannot have a boundary farther seaward than the boundary of the United States; that the location of the seaward boundary of the United States is a political question and a matter of foreign relations, for determination by the political branches of the Federal Government; that it has been so determined from the beginning of our history as a nation, and long before the admission of Louisiana to the Union, that the marginal sea of the United States does not exceed three miles in width; and that this is a matter subject to judicial notice. Thus the claim of the United

States to the submerged lands and resources lying more than three miles from the coast of Louisiana rests upon the legal effect of this Court's former decision in *United States* v. *Louisiana,* 339 U. S. 699, the Submerged Lands Act, and the location of the national maritime boundary along the coast of the State. These are all matters of law or subject to judicial notice, and should be decided on this motion without the taking of any evidence. See the discussion of this subject in the Memorandum for the United States in Reply to Louisiana's Brief in Opposition to Motion for Leave to File Complaint, pages 4–8.[2]

The decree to be entered under this procedure should describe the federal area of submerged lands as beginning at a stated distance seaward from the low-water mark and outer limit of inland waters. Thereafter, if the parties are in disagreement as to the location of any or all of that base line, one or more supplemental decrees may be entered, as necessary, specifically identifying parts or all of it. That is the procedure adopted by the Court in *United States* v. *California,* 332 U. S. 19, where the problem was the same as in the present case, except that there the disputed area began at the low-water mark and outer limit of inland waters instead of three miles seaward therefrom, as here. In that case, the

[2] Louisiana's answer does not appear to suggest the taking of evidence on the primary issue of the width of the State's marginal belt. But if the answer does imply that "evidence" should be taken as to historical events, treaties, proclamations, and the like, it ignores the fact that such historical events and documents, *if material*, are properly subject to judicial notice and can be discussed in briefs and oral argument. A trial is wholly unnecessary in order to bring those matters to the Court's attention.

Court rejected California's contention that the issue, framed in such terms, was too vague, saying (332 U. S. at 26):

> * * * there is no reason why, after determining in general who owns the three-mile belt here involved, the Court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary. *Oklahoma* v. *Texas,* 258 U. S. 574, 582. Such practice is commonplace in actions similar to this which are in the nature of equitable proceedings. See *e. g. Oklahoma* v. *Texas,* 256 U. S. 602, 608–609; 260 U. S. 606, 625; 261 U. S. 340. California's contention concerning the indefiniteness of the claim presents no insuperable obstacle to the exercise of the highly important jurisdiction conferred on us by Article III of the Constitution.

On a shelving and tortuous coast such as that of Louisiana, specific identification of the low-water mark and the outer limit of inland waters involves both difficult factual questions of physical observation at every disputed location and legal questions as to definition of terms and application of such definitions to particular physical situations. Resolution of these problems with respect to the entire Louisiana coast will be, at best, a protracted process. There are many reasons why the clear-cut legal question of the width of the marginal belt should be answered separately and in advance. It can be answered quickly. If it is answered first, then every subsidiary determination of a segment of the base line will automatically determine the State and federal titles seaward therefrom; if,

however, all questions are thrown into one consolidated trial, title to none of the submerged land will be settled until final judgment. And until the width of the marginal belt is known, there can be no complete identification of the waters whose status (as inland water or marginal sea) is material to the case. For example, if Louisiana owns all the submerged lands to the 27th parallel, as it claims, it will not be necessary to identify any inland waters at all. Even under the State's most modest claim, of a marginal belt of three leagues, the State will own the beds of all coastal indentations less than six leagues wide, while under the three-mile contention of the United States it will be necessary to decide the inland water status of all indentations less than six miles in width. Obviously, there must be a preliminary determination of the width of the marginal belt before it can be known what the further issues will be. The mere fact that trial of the consolidated issues would, as the State asserts, require the taking of much evidence should suffice to show the undesirability of complicating and delaying decision of the single legal question presented by the Government's present motion, by consolidating it for trial with the subsidiary factual issues that the State seeks to advance. See also the discussion in the Memorandum for the United States in Reply to Louisiana's Brief in Opposition to Motion for Leave to File Complaint, pages 9–12.

For these reasons, the United States believes that this motion should be set down for early argument, so that the formulation and ultimate resolution of fur-

ther factual issues will not be unnecessarily delayed.[3] The United States expects to file at an early date its brief on the merits in support of the present motion.

Respectfully submitted.

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DECEMBER 1956.

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[3] On December 4, 1956, Louisiana filed a motion to take depositions of two former and twelve present officials or employees of the State, its agencies or its political subdivisions. We believe that what has been said above, and in our previous brief and memorandum, shows the undesirability of taking evidence before a decision of the primary legal question has disclosed what the subsidiary factual issues, if any, will be.

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